

REMARKS:

Claims 105-107, 109-118, and 127-149 were pending in the application. (Applicant notes that the previous response included 2 versions of claim 146. The “second” claim 146 of the previous response has been reintroduced as claim 150 herein.) Claims 105-107, 109-118, 127-128, 131-133, 140 and 146 have amended. Claims 150-167 have been added. Therefore, claims 105-107, 109-118 and 127-167 are now pending in this application.

Claim 146

As noted above, Applicant’s previous response included 2 versions of claim 146. To prevent further confusion, Applicant has included the “second” claim 146 as new claim 150.

Double Patenting Rejection

The Examiner has rejected the pending claims based on obviousness-type double patenting in view of U.S. Appl. No.10/231,577. Without acceding to the propriety of the rejection, Applicant nevertheless submits herewith a terminal disclaimer that is believed to address this rejection.

Section 102 Rejections

The Examiner rejected various ones of the pending claims under 35 U.S.C. § 102(e) based on U.S. Patent No. 6,973,577 to Kouznetsov. As explained in Applicant’s response to the Notice of Allowance issued in U.S. Appl. No. 10/231,577 (filed September 14, 2007), Applicant disagrees with these rejections. Those remarks are incorporated by reference into the present response.

Independent claim 105, as amended herein, recites in relevant part (emphasis added):

weighting each of the first plurality of results to obtain a first score indicative of whether the code under investigation *has characteristics and/or behaviors typically associated with valid code*;

weighting each of the second plurality of results to obtain a second score indicative of whether the code under investigation *has characteristics and/or behaviors typically associated with malicious code, wherein the second score is obtained independently of the first score*

The Examiner appears to allege that Kouznetsov teaches both the “first score” and “second score” of claim 105. *See* Office Action at 4 (alleging that static analyzer 52 generates the “first score” of claim 105 and that dynamic analyzer 53 generates the “second score” of claim 105). Applicant notes that both analyzers 52 and 53 are searching for “suspicious” events. *See* Kouznetsov, col. 4 at lines 59-67. Accordingly, Kouznetsov includes no teaching or suggestion of “weighting each of the first plurality of results to obtain a first score indicative of whether the code under investigation has characteristics and/or behaviors typically associated *with valid code.*” Because claim 105 recites that “the second score is obtained independently of the first score,” the output of Kouznetsov’s analyzers 52 and 53, which are indicative of “suspicious” events, cannot be considered to correspond to the “first score” of claim 105. In short, Kouznetsov’s solution is concerned only with “suspicious” event, and thus does not teach or suggest “weighting each of the first plurality of results to obtain a first score indicative of whether the code under investigation has characteristics and/or behaviors typically associated with valid code,” as recited in claim 105.

For at least this reason, claim 105 and its dependent claims are believed to be in condition for allowance.

Independent claims 115, 127, 128, 152, 159, and 167 and their corresponding dependent claims are believed to be in condition for allowance for reasons similar to those provided for claim 105.

CONCLUSION:

Applicants submit the application is in condition for allowance, and an early notice to that effect is requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above-referenced application from becoming abandoned, Applicant hereby petitions for such extension.

The Commissioner is authorized to charge any fees that may be required, or credit any overpayment, to Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C. Deposit Account No. 501505/6002-00602/DMM.

Respectfully submitted,

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